IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES *Appellee,* *v.* Major (O-4) **CLARENCE ANDERSON III,** United States Air Force, *Appellant.*	**PETITION FOR RECONSIDERATION** USCA Dkt. No. 17-0429/AF Crim. App. No. 39023 Filed on November 13, 2017

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Appellant personally requests this Court to reconsider its order dated 11 October 2017 (Attachment 1), denying his petition for a new trial, for the following reasons:

1. First, the appellant's previous Petition for a New Trial pursuant to Article 73 UCMJ, dated 8 August 2017 (Attachment 2), was filed erroneously by his former counsel, Mr. Brian Mizer. A Petition for a New Trial pursuant to Article 73 UCMJ can only be filed to TJAG pursuant to CAAF Rule 19 (f) and/or CAAF Rule 29. However, in this case, it was filed pursuant to Grostefon (Attachments 3 and 4) under CAAF Rule 21A and/or Rule 19 (a)(5)(C), rather than under CAAF Rule 29. In addition, the Petition for a New Trial exceeded the limit of 15 pages, was not filed within 30 days of the filing of the supplement, and was not filed in the correct form pursuant to CAAF Rule 21A (a-c). Moreover, counsel did not file a brief in support of appellant's Petition for a New Trial as required by CAAF Rule 29(c). Therefore, the appellant was prejudiced because his petition for a New Trial pursuant to Article 73 UCMJ, was filed erroneously, failed to comply with the Rules of this Court and may not have been considered by this Court on its merits.

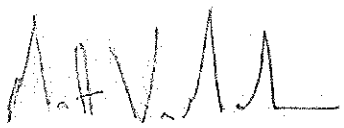
2. Additionally, because appellant was prejudiced by his former counsel for erroneously filing his Petition for a New Trial not pursuant to Article 73 UCMJ, CAAF Rule 19 (f), and CAAF Rule 29, he requests this Court conduct an inquiry into his former counsel, Mr. Brian Mizer, pursuant to CAAF Rule 15, for failing to comply with the Rules of this Court.

3. Lastly, appellant asks this court to reconsider its denial of his prior Petition for New Trial because his previous appellate counsel works for the Air Force and is a judge advocate in the U.S. Navy Reserves and as a result any Air Force or Navy counsel detailed to assist him likely has a conflict of interest. As a result, appellant requests a civilian appellate counsel be provided to him at no expense or an attorney be detailed from the Army's Appellate Defense Division.

Respectfully submitted,

CERTIFICATE OF FILING AND SERVICE

I hereby certify I filed a copy of the foregoing electronically with the Clerk of Court on November 13, 2017 and that a copy was also electronically served on the Air Force Appellate Government Division on the same date.



Matthew D. Van Maasdam, Maj, USAF
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20 November 2017

IN THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES, *Appellee,*	) OPPOSITION TO APPELLANT'S) PETITION FOR) RECONSIDERATION
v.	)
	) Crim. App. No. 39023
Major (O-4) CLARENCE ANDERSON III, USAF, *Appellant.*	)) USCA Dkt. No. 17-0429/AF)

TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Pursuant to Rule 31(b) of this Court's Rules of Practice and Procedure, the United States responds and opposes Appellant's Petition for Reconsideration. Appellant has failed to show why reconsideration is necessary in this Court's denial of his second petition for new trial.

First, Appellant claims he was prejudiced "because his petition for a New Trial pursuant to Article 73 UCMJ, was filed erroneously, failed to comply with the Rules of this Court and may not have been considered by this Court on its merits." (App. Pet. at 1.) Yet Appellant wholly fails to explain how the rule under which his Petition was filed in any way prejudiced this Court's review of his petition. Moreover, Appellant's ambiguous and speculative claim that this Court "may not" have considered his petition on the merits falters as well as he wholly

fails to show that this Court did not properly and judiciously review his petition before denying it.

Next, Appellant turns his sights on his former appellate counsel and requests that this Court "conduct an inquiry" into his former counsel's actions since Appellant was allegedly "prejudiced by his former counsel for erroneously filing his Petition for a New Trial . . . ." (Id.) Again, Appellant has failed to show how he has been prejudiced by any action of his former appellate defense counsel, let alone the way in which his counsel filed his latest petition for new trial. Notably, Appellant's former appellate counsel assisted Appellant in drafting and filing numerous motions, briefs, writs, and Appellant's first petition for new trial before the Air Force Court of Criminal Appeals (AFCCA). Moreover, Appellant's former counsel represented him before AFCCA during the oral argument in this case that focused on Appellant's first petition for new trial.

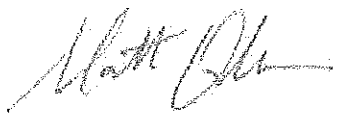
Before this Court, the extensive representation of Appellant's former appellate counsel continued before in the form of drafting and filing multiple motions, as well as a petition for review and its accompanying supplement. Appellant has unquestionably benefitted from his former appellate counsel's representation; while each of the issues and petitions raised by Appellant have ultimately failed, such is due to the lack of evidentiary support for those issues and petitions, not the advocacy by which Appellant's former counsel presented them.

Appellant has simply not been prejudiced in any fashion by the representation of his former appellate counsel, particularly with regard to the instant petition for new trial.

Finally, Appellant asks this Court to provided him with "a civilian appellate counsel . . . at no expense or an attorney detailed from the Army's Appellate Defense Division." (Id.) Again, Appellant fails to explain how his current representation by his newly-assigned Air Force military appellate defense counsel is insufficient. Moreover, he wholly fails to explain how such representation is "likely . . . a conflict of interest" due to his former appellate defense counsel's affiliation with the Air Force as a civilian attorney and the Navy as a reserve judge advocate. Such claims and requests should be easily dismissed.

Notably, Appellant does not even attempt to ask this Court to reconsider his petition based on the actual merits of said petition. Likely, this is because this second petition for new trial, an essential carbon copy of his first petition for new trial filed at AFCCA, was as equally unpersuasive to this Court as it was to AFCCA when AFCCA rightfully denied his first petition. Every claim and complaint Appellant raised in his second petition has been thoroughly examined and shown to warrant no relief. As such, reconsideration is unnecessary in this instance.

WHEREFORE, the United States respectfully requests this Honorable Court deny Appellant's Petition for Reconsideration.



G. MATT OSBORN, Lt Col, USAF
Appellate Government Counsel
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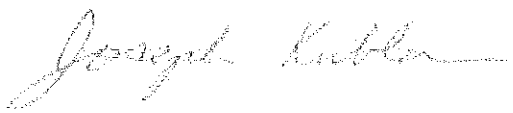

JOSEPH J. KUBLER, Lt Col, USAF
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Court Bar No. 33341

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate defense counsel, and to the Appellate Defense Division on 20 November 2017.

G. MATT OSBORN, Lt Col, USAF
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IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES *Appellee,* *v.* Major (O-4) **CLARENCE ANDERSON III,** United States Air Force, *Appellant.*	**REPLY TO GOVERNMENT ANSWER TO PETITION FOR RECONSIDERATION** USCA Dkt. No. 17-0429/AF Crim. App. No. 39023 Filed on November 27, 2017

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

Appellant personally requests this Court consider his reply to the Government's answer to his Petition for Reconsideration.

Pursuant to Rule 31(c) and 34 of this Court, the Appellant responds to the Government and wholeheartedly rejects its assertion that the merits of his petition for reconsideration are "ambiguous and speculative," that "[e]very claim and complaint Appellant raised in his second petition has been thoroughly examined and shown to warrant no relief," and "this second petition for new trial, [is] an essential carbon copy of his first petition for new trial filed to AFCCA." (Gov't. Response at 1 and 3).

The petition is neither frivolous nor speculative. The Government alleged that the appellant did not address any of the merits contained in his petition for a new trial. To address those merits, the appellant asks that this Court consider the following. First, it is a fact that Appellant's second petition for a new trial disclosed the Government withheld favorable discovery evidence of a congressional response pursuant to Article 46 UCMJ, 10 U.S.C. § 846, (as implemented by RCM 701-703, MRE 401 and MRE 402) and constituted a violation of its discovery obligations. *(Brady v.*

Maryland, 373 U.S. at 83, 87 (1963) (See also *Appellant's Second Petition for a New Trial at 5*). This issue was not brought up in Appellant's initial petition for a new trial. In fact, the Government will not find any previously filed assignment of errors brief, oral argument, or petition for a new trial to the Air Force Court of Criminal Appeals (AFCCA), nor will the Government find any previously filed extraordinary writ, or petition for review to this Court – alleging the Government withheld discovery. "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, 'irrespective' of the good faith or bad faith of the prosecution." (Id). This Court has gone even further and held that Article 46 and its implementing rules provide greater statutory discovery rights to an accused than does his constitutional rights to due process. *(United States v. Roberts,* 59, M.J. 327). (C.A.A.F. 2004). (citing *United States v. Hart,* 29, M.J. 407, 409-10). (C.M.A. 1990).

The Appellant's second petition for a new trial showed the Government stated in the congressional response, which was not provided as discovery evidence to the Appellant, the proper interpretation of RCM 1102, which grants the military judge authority to order a new trial during a post-trial Article 39(a) session, even after post- authentication of the record. (*see Appellant's Second Petition for a New Trial at 5*). The Government stated in the congressional response three months after the record was authenticated that "the military judge may rule on *any* motions the defense counsel submits" (to include a motion for a new trial). (*Id*). The Appellant should have been allowed to support his argument at trial by producing the Government's congressional response, and prove the law pursuant to RCM 1102(e), authorizes "that the military judge shall take such action as may be appropriate" and even order a new trial after authentication of the

record. This would have allowed the Appellant's trial defense team to counter the Government's argument at trial by showing that its assertion at trial was contradicted by the overall position of the Air Force as a whole. It is especially noteworthy that neither the Government nor the AFCCA, mention RCM 1102(e) in their justification to deny Appellant merited relief. The newly discovered evidence of the Government's congressional response conflicts with both the Government's novel argument made during the post-trial Article 39(a) session, and the AFCCA's ruling on this element of law, and could have been used to impeach the Government's case at trial. *Anderson v. United States*, 2017 CCA LEXIS 382 (A.F. Ct. Crim App. 2017). Therefore, the Government violated the Appellant's due process rights because it withheld evidence that is "exculpatory, substantive evidence, or evidence capable of impeaching the [G]overnment's case," and "there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *(United States v. Behenna,* 71, M.J. 228, 238). (C.A.A.F. 2012).

Additionally, it is neither frivolous nor speculative t that Appellant's second petition for a new trial also disclosed the AFCCA erred in its decision that *U.S. v. Williams* (37 M.J. 352 (C.M.A. 1993) does not apply to the Appellant when it argued that "Unlike *Williams,* a newly convened court-martial in this case could not find or infer that by reporting Petitioner's crimes [the victim] was attempting to preserve a sexual relationship with [Mr. Madden] because, at the time she reported Petitioner's offenses, no such relationship existed." *Anderson v. United States*, 2017 CCA LEXIS 382 at 11 (A.F. Ct. Crim App. 2017). Because the Government was allowed to successfully argue the military judge's powers were limited at the post-trial Article 39(a) session because the record was previously authenticated, and subsequently also successfully argue for the military judge to deny the Appellant's request to prove perjury and obstruction pursuant to M.R.E. 412,

the Appellant was unlawfully prohibited from proving and/or 'inferring', the sexual nature between the alleged victim and Mr. Madden began before the victim made her sexual assault accusations against the Appellant. Evidence clearly shows the AFCCA ignored the police report from 14 September 2013, where the Appellant reports to the responding officer his belief that the alleged victim was having an affair with Mr. Madden. (AE XXII.) The responding officer also verified the Appellant's belief of the affair during her testimony at trial. (R. at 304). The Appellant's belief substantiated by the aforementioned police report of the affair, were affirmed before the alleged victim made her report to AFOSI and while she and the Appellant were still married and living together, thus fatally contests the AFCCA's decision that "at the time she reported Petitioner's offenses, no such relationship existed." *Anderson v. United States*, 2017 CCA LEXIS 382 at 11 (A.F. Ct. Crim App. 2017).

Further proof of the misapplication of *Williams* from the AFCCA is substantiated when it also blatantly ignored evidence that Mr. Madden admitted to the Appellant's mother on a recorded phone call after the Appellant's trial, that he was dating the alleged victim in August of 2013 (one month before the alleged victim made her report to AFOSI and while she was still married and living with the Appellant), which clearly proves Mr. Madden not only perjured himself during the MRE 412 hearing where both he and the alleged victim testified that they had a dating and sexual relationship around the time of her divorce from the Appellant in April or May of 2014, but again fatally contests the AFCCA's decision that "at the time she reported Petitioner's offenses, no such relationship existed." (*Id*). (R. at 95). (AE XXIX at 37).

Furthermore, it is not frivolous nor speculative but also fact Appellant is not arguing that his former appellate counsel did not effectively assist Appellant in "drafting and filing numerous

motions, briefs, writs," to the AFCCA or this Court. (Gov't Answer at 2). Appellant specifically argues his former appellate counsel did not provide effective assistance of counsel when filing Appellant's petition for a new trial pursuant to the rules of this Court. Effective assistance of counsel and due diligence is not one step in the process, but a continuum throughout. "A military accused is entitled to the effective assistance of counsel during pretrial stages, trial proceedings, and post-trial processing of the court- martial." (*United States v. Rivas*, 3 M.J. 282). (C.M.A. 1977).

It is indisputable as evidence clearly shows Appellant's former counsel did not adhere to the rules of this Court when he filed the Appellant's petition for a new trial pursuant to *Grostefon,* and that the Appellant was prejudiced as a result of this erroneous filing because his former counsel did not file a brief in support of the petition for a new trial or advise the Appellant of this Rule pursuant to 29(c). (*See Attachment 1*) (*see also Appellant's Second Petition for a New Trial at 1*). Appellant's former counsel even stated there are no rules for the accused to submit his own petition for a new trial. (*See Attachment 2*). However, RCM 1210(b) states "a petition for a new trial may be submitted by the accused personally," proving his counsel was ineffective and his actions prejudiced the Appellant.

The Appellant's former counsel and the Government wish the Appellant to speculate and accept the preposterous assumption that this Court would accept and review a petition for a new trial on its merits alleging a *Brady* violation but not submitted pursuant to its Rules, and that this Court (without a request from appellant) would waive the requirement to file a brief in support of the petition for a new trial, ruling in favor of the Appellant's petition on its merits, and never provide the Government an opportunity to contest the petition on its merits in an adversarial form. (*See Attachment 3*).

Appellant's former counsel even stated the Government does not have to respond to the petition for a new trial by stating "the government doesn't have to file a response" (*Id*). However, Rule 29(c) of this Court states "An appellee's answer 'shall be' filed no later than 30 days after the filing of an appellant's brief" further proving his former counsel was ineffective and did not fall within the range of competence.

Also noteworthy, the Appellant's former counsel even suspected this Court was going to deny Appellant's petition for a new trial for not following the rules of being timely filed "I suspect they were originally going to deny it for being untimely filed", but now expects Appellant to believe his petition for a new trial was thoroughly considered on its merits without following the rules which specifically state a brief in support of the petition for a new trial "will be filed" pursuant to Rule 29(c) of this Court. (*Id*).

The Sixth Amendment guarantees an accused the right to the effective assistance of counsel. (*United States v. Gooch*, 69, M.J. 353, 361). (C.A.A.F. 2011) (citing *United States v. Gilley*, 56, M.J. 113, 124). (C.A.AF. 2001). To establish that his counsel was ineffective, appellant must satisfy the two-part test, "both (1) that his counsel's performance was deficient, and (2) that this deficiency resulted in prejudice." (*United States v. Green*, 68, M.J 360, 361-362). (C.A.A.F. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687). (1984). It is evident that because the Appellant's petition was not filed pursuant to the rules of this Court, due process was impeded even preventing the Government from fairly responding to the accusations of withholding discovery (please note the government did not respond to Appellant's petition for a new trial but did respond to Appellant's petition for reconsideration as the latter was filed pursuant to this Court's rules), and ultimately prejudiced the Appellant from appropriately presenting these issues before this Court. This Court is a federal court of appeals, governed by federal judges appointed by the President of the United

States, and affirmed by members of the United States Senate, therefore the rules of this Court are not open for interpretation, they must be followed.

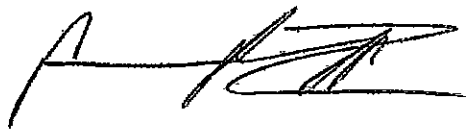
Furthermore, it appears the integrity of due process may be further compromised which warrants a deeper dive into these matters pursuant to Rule 15 of this Court. It is highly suspicious when the Appellant began to challenge the dubious nature of how his former counsel submitted his petition for a new trial on Tuesday, 10 Oct 2017 (after waiting almost two months on the status of the petition) (*See Attachments 4 and 5*), his former counsel responded later that day to the Appellant's challenge hinting that the petition would likely be "denied any day" (*See Attachment 1*). Suspiciously, the following day on Wednesday, 11 Oct 2017, Appellant's former counsel "suddenly" received word from this Court that Appellant's petition for a new trial was denied. (*See Attachments 3 and 6*) (*See also Court of Appeals for the Armed Forces decision on Petition for New Trial Pursuant to Article 73, Decided 11 Oct 2017*).

Finally, Appellant recognizes and understands this Court previously denied a petition for review in another case, but when additional evidence was presented, this Court reversed course and granted review of the case because of the merits of the new evidence. *(United States v. Keith E. Barry)*. (C.A.A.F. 2017). Likewise, the Appellant rejects the advice from his former counsel that he can only receive justice by way of "collateral attack/habeas corpus in U.S. District Court" (*See Attachment 3*), and prays in the interest of justice this Court also accept the merits of the new evidence in this case, and reject the Government's argument against merited relief. (Gov't. Response at 3).

Lastly, Appellant respectfully withdraws his request for civilian counsel or counsel from the Army's Appellate Defense Division, as the conflict of interest issues no longer exist as his newly assigned counsel works in a separate division not associated with the Appellate Defense

Division or the Government Appellate Division.

Respectfully submitted,



CLARENCE ANDERSON III

CERTIFICATE OF FILING AND SERVICE

I hereby certify I filed a copy of the foregoing electronically with the Clerk of Court on November 27, 2017 and that a copy was also electronically served on the Air Force Appellate Government Division on the same date.

Matthew D. Van Maasdam, Maj, USAF
Chief, Policy & Training
C.A.A.F. Bar No. 34619
AFLOA/JAJD
1500 W. Perimeter Road, Suite 1310
Joint Base Andrews, MD 20762
Office: (240) 612-4793

Attachment 1

From: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Sent: Tuesday, October 10, 2017 2:34 PM

To: Beatrice Anderson
Subject: RE: Update and CAAF Rule 29

Mrs. Anderson,

I apologize for the delayed response. Our office and the courts were closed yesterday. Today, I have been in court, and preparing for another full day of court tomorrow. I likely will not be able to speak with Clarence until tomorrow afternoon or Thursday. But the bottom line is there isn't much to discuss.

As I have relayed to both you and Clarence, his petition for new trial was filed on time. I have confirmed the court received it. There isn't a brief in support because Clarence's brief was incorporated into the petition pursuant to Grostefon. I expect the petition for new trial to be denied any day, and Clarence can then appeal his case to federal district court, where I hope a judge will give it the review his case deserves.

Very Respectfully,

Brian L. Mizer
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4773

Attachment 2

From: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Sent: Tuesday, October 10, 2017 7:55 PM
To: Beatrice Anderson
Subject: RE: [Non-DoD Source] Re: Update and CAAF Rule 29

Mrs. Anderson,

The Grostefon rules refer to direct appeal, and there is no rule pertaining to a Grostefon petition for new trial. I submitted it, and the Court accepted it, pursuant to Rule 29. Petitions for new trial are rare, and the rules really do not contemplate the filing of a Grostefon petition for new trial. Clarence can rest easy that, while we disagree with the outcome, the CAAF reviewed the merits of his case and there are no procedural defects in his pleadings submitted either by his attorneys or himself. I hope that helps.

Very Respectfully,

Brian L. Mizer
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4773

Attachment 3

From: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Sent: Wednesday, October 11, 2017 6:29 PM
To: Beatrice Anderson
Cc: Boomer, Jane E Col USAF AFLOA (US)
Subject: RE: [Non-DoD Source] Re: Update and CAAF Rule 29

Mrs. Anderson,

I tried calling Clarence's counselors at the brig for two hours this afternoon, to include on my drive home this evening, but the phone was either busy or just rang. You appear to be able to contact him much more easily than I, so I will write a brief explanation tonight. I will hopefully be able to reach Clarence tomorrow, and I will be in the office all morning.

I do not mean to discourage your from contacting Colonel Cordova. You have the same rights as any citizen to contact your government. However, you should not include our private/potentially privileged/attorney-client communications. He can share anything you send him with the government, to include U.S. Attorneys should Clarence pursue collateral attack in the future.

Clarence's petition was filed with TJAG pursuant to Article 73 in August, as Clarence and I have discussed on multiple occasions. TJAG fulfilled his obligation under Article 73, UCMJ, and forwarded the petition to CAAF. CAAF Rule 29, to the extent it is substantively relevant, was triggered. I have repeatedly told Clarence that the Court's clerk's office may have been confused by the pleading because it was delivered before the Court denied his direct appeal, but they didn't process it or review it until after direct appeal was denied. I suspect they were originally going to deny it for being untimely filed, but I insisted in multiple phone calls to the clerk's office that the Court consider it on its merits because it was timely filed pursuant to Article 73, UCMJ.

The government doesn't have to file a response. In fact, they did not file anything but a pro forma response to the attorney petition for new trial, which I filed earlier this summer. That is actually true of most pleadings filed even on direct appeal at CAAF. The government rarely responds to our requests asking the Court to review a case. As you can see from the order I forwarded earlier this evening, CAAF considered Clarence's Grostefon arguments on their merits, and denied them on their merits. Clarence's procedural concerns are not valid. Substantively, I could not ethically file the pleading Clarence drafted and I submitted to TJAG because any attorney would consider it to be frivolous. Put another way, no attorney would argue the Air Force's representation to a member of Congress regarding the general powers of a military judge conducting a post-trial Article 39a hearing has any legal significance whatsoever at either that hearing or on appeal. Grostefon permits Clarence to submit frivolous pleadings, but there is no procedural rule that operates to make them any more likely to succeed.

None of that is meant to say that I do not believe there has been a great injustice in Clarence's case. I sincerely believed CAAF would cure that error, but that obviously did not happen. I can speculate they did this because they may have believed the Air Force Court was wrong, but that it did not abuse its discretion, which is a high standard of review. However, nobody but the judges will ever know why they denied review because they don't have to offer an explanation.

With Clarence's direct appeal at an end, I can send the entire paper copy of the record of trial to you or Clarence's future counsel or designee. I would encourage Clarence to pursue collateral attack/habeas corpus in U.S. District Court. I hope that blatant perjury is enough to interest the federal, civilian judiciary. Unfortunately, I have no statutory authorization to participate in that process absent some nexus to an eventual hearing under the UCMJ. I hope you can find some measure of comfort in the fact that Clarence will soon be home with you, and I wish you all the best. As always, I stand ready to answer any remaining questions about Clarence's now-complete appeal.

Very Respectfully,

Brian L. Mizer
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4773

Attachment 4

-----Original Message-----
From: Beatrice Anderson
[Caution-Caution-Caution-Caution-Caution-mailto:beatriceanderson57@hotmail.com < Caution-Caution-Caution-Caution-Caution-mailto:beatriceanderson57@hotmail.com >]
Sent: Tuesday, October 10, 2017 10:40 AM
To: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Subject: [Non-DoD Source] Update and CAAF Rule 29

Mr. Mizer, I am very disappointed and baffled to say the least. I have tried to contact you and my son has tried to contact you with no luck. Could you give me any updates on what's going on and explain to me CAAF Rule 29?

According to CAAF Rule 29(a), If the TJAG has filed the 7 copies to the Clerks office at CAAF? Rule 29(b), If the Clerk at CAAF has notified all Counsel of the petition for a new trial? Finally in Rule 29(c), If a brief in support of his petition for a new trial has been submitted to CAAF?

Thanks and look forward to hearing from you.

Beatrice Anderson

Crime Victims' Right Advocate and Crime Victim

Attachment 5

Brian L. Mizer
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4773

-----Original Message-----
From: Beatrice Anderson [Caution-Caution-Caution-mailto:beatriceanderson57@hotmail.com < Caution-Caution-Caution-mailto:beatriceanderson57@hotmail.com >]
Sent: Tuesday, October 10, 2017 9:31 PM
To: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Subject: [Non-DoD Source] Re: Update and CAAF Rule 29

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Brian thanks for the prompt reply, but Clarence is confuse with what you told him about Grostefon.

According to Rule 21A, Grostefon shall be presented in a separate Appendix to the supplement not exceed, 15 pages. Clarence's petition for a new trial was submitted to the TJAG per Article 73 and was 21 pages long. Rule 21A states Grostefon issues raised within 30 days of the filing of the supplement under Rule 19 (a) (5) (C) are subject to and included within the 15 page limit in Rule 21A (a).

Clarence busted his Grostefon suspense because you filed his petition for review to CAAF on 6 June 2017, therefore his Grostefon was due no later then 6 July 2017.

When Clarence filed his petition for a new trial, he filed it on 16 August 2017, past the suspense of 6 July 2017.

If this is the case, Clarence file his petition for a new trial under Rule 29 and not under Rule 21A. Thanks and I look forward to your reply.

Beatrice Anderson

Crime Victims Right Advocate

and Crime Victim

Attachment 6

Sent: Wednesday, October 11, 2017 11:41 PM
To: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Cc: Boomer, Jane E Col USAF AFLOA (US) <jane.e.boomer.mil@mail.mil>
Subject: Re: [Non-DoD Source] Re: Update and CAAF Rule 29

Brian, I just talked to Clarence and he wishes to talk to both you and Col.
Boomer tomorrow morning at 0930 EST. Clarence feels it is highly suspicious for CAAF to deny his petition for a new trial pursuant to Article 73 the day he question how you erroneously filed his petition for a new trail directly to CAAF and not the TJAG pursuant to Article 73 and Rule 29. Clarence feels that this warrants an IAC complaint and would like to speak to Col. Boomer or anyone else who can provide him counsel to file the IAC complaint. After the IAC complaint is filed Clarence wants to file a petition for a new trial with the new counsel Col. Boomer will provide to him. Good Luck to You and Thanks for all your help in highlighting all of the injustices Clarence has received.

Beatrice Anderson
Crime Victims' Right Advocate and Crime Victim

From: Mizer, Brian L CIV (US) <brian.l.mizer.civ@mail.mil>
Sent: Wednesday, October 11, 2017 6:29:59 PM
To: Beatrice Anderson
Cc: Boomer, Jane E Col USAF AFLOA (US)
Subject: RE: [Non-DoD Source] Re: Update and CAAF Rule 29

Mrs. Anderson,

I tried calling Clarence's counselors at the brig for two hours this afternoon, to include on my drive home this evening, but the phone was either busy or just rang. You appear to be able to contact him much more easily than I, so I will write a brief explanation tonight. I will hopefully be able to reach Clarence tomorrow, and I will be in the office all morning.

I do not mean to discourage your from contacting Colonel Cordova. You have the same rights as any citizen to contact your government. However, you should not include our private/potentially privileged/attorney-client communications. He can share anything you send him with the government, to include U.S. Attorneys should Clarence pursue collateral attack in the future.

Clarence's petition was filed with TJAG pursuant to Article 73 in August, as Clarence and I have discussed on multiple occasions. TJAG fulfilled his obligation under Article 73, UCMJ, and forwarded the petition to CAAF. CAAF Rule 29, to the extent it is substantively relevant, was triggered. I have repeatedly told Clarence that the Court's clerk's office may have been confused by the pleading because it was delivered before the Court denied his direct appeal, but they didn't process it or review it until after direct appeal was denied. I suspect they were originally going to deny it for being untimely filed, but I insisted in multiple phone calls to the clerk's office that the Court consider it on its merits because it was timely filed pursuant to Article 73, UCMJ.

The government doesn't have to file a response. In fact, they did not file anything but a pro forma response to the attorney petition for new trial, which I filed earlier this summer. That is actually true of most pleadings filed even on direct appeal at CAAF. The government rarely responds to our requests asking the Court to review a case. As you can see